IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.809 OF 2006

Vasant @ Baba Maruti
Chavan & Ors. ....Appellants.

V/s

Ashok Namdeo Chavan,
Age 39, Occ: Agriculture,
R/o. Mayuani (Deceased)
Heirs

1A. Smt. Anusaya Namdeo Chavan
and Ors. .....Respondents.

Mr. N.R. Bubna for Respondents.

Mr. A.M. Kulkarni for Respondent Nos. 1-A to 1-E.

CORAM: V.M. KANADE, J.
DATE : 31st July, 2007.

P.C.:

1. Heard the learned Counsel appearing on behalf of appellants and the learned Counsel appearing on behalf of respondents.

2. Appellants herein are original plaintiffs and respondents

are original defendants (Hereinafter for the sake of convenience the parties will be referred to as “plaintiffs” and “defendants”).

3. A suit was filed by plaintiffs in the trial court, seeking perpetual injunction restraining defendants from interfering with possession of plaintiffs over the suit land. The suit land consisted of agricultural land bearing Gat No. 1020 having area of 9 Hectares 84-R situated at village Mahuli, Taluka Khanapur, District Sangli.

4. It is the case of plaintiffs that father of plaintiffs viz Maruti Chavan was the tenant of the suit land and that proceedings under Section 32-G of the Tenancy Act were initiated and that he became a deemed purchaser of the suit land and, accordingly, purchase certificate under Section 32-M of the Tenancy Act was issued in the name of Maruti Chavan. It is alleged that Maruti paid the purchase price of the land and defendants, therefore, have no right, title or interest in the suit land. It is alleged that Defendant No.2 - Pandurang had filed a suit against plaintiffs and he had

obtained consent of Maruti by misrepresentation. It is alleged that, after death of Maruti, plaintiffs, being the legal heirs of Maruti, are exclusively in possession and title holder of the suit land.

5. Defendants filed their Written Statement in which it is alleged that Maruti was the Karta of the Joint Hindu Family and that he had been a tenant of the suit land on behalf of joint hindu family. It is, therefore, submitted that plaintiffs have no exclusive possession over the suit land. It is alleged that other defendants have paid their share as purchase price to Maruti. However, no receipt was issued after the said payment was made.

6. The trial court decreed the said suit and restrained defendants from causing any interference with possession of plaintiffs. Being aggrieved by the aforesaid order, defendants filed an appeal in District Court which was allowed and the judgment and order passed by the trial court was set aside. Plaintiffs, being aggrieved by the aforesaid order, has filed this second appeal.

7. It is submitted by the learned Counsel appearing on behalf of appellants that the finding recorded by the Lower Appellate Court was perverse inasmuch as the said finding was recorded merely on conjectures and surmises and, therefore, the said finding was liable to be set aside. It is submitted that certificate under Section 32-M was issued in the name of plaintiffs' father and which showed that he was in exclusive possession of the suit land and also a title holder of the suit land. It is submitted that no evidence has been adduced by defendants to show that other defendants had paid purchase price and, therefore, in view of the specific agreement between parties, they were not entitled to claim any interest in the suit land. The learned Counsel invited my attention to a document at Exhibit-82 which was a partition memo dated 08/03/1965. He submitted that the inference drawn by the Lower Appellate Court on the basis of the said memo was incorrect which is based on conjectures and surmises. He then submitted that the finding recorded by the Lower Appellate Court that Maruti has started cultivating the land for joint family, again, was based on evidence which

is not on record. The learned Counsel then submitted that the Lower Appellate Court has discarded the testimony of P.W.2 Anusaya only on the ground that she did not know the location of the boundaries of the suit land. He submitted that this could not have been the ground for discarding the testimony of witness who was examined on behalf of plaintiffs and who was the adjoining land holder who had specifically stated that plaintiffs were in possession of the suit land. It is urged by the learned Counsel appearing on behalf of appellants-plaintiffs that one of the executants was not even a member of the joint family. He submitted that the trial court, on the basis of this particular aspect, had decreed the suit and had not relied on the said memo of partition.

8. It is not possible to accept the submissions made by the learned Counsel appearing on behalf of plaintiffs. The Lower Appellate Court has passed a well reasoned order and has considered each and every document and the oral evidence on record on the basis of which the Court has come to the conclusion that Maruti had been cultivating the suit

land as tenant on behalf of joint hindu family. It is an admitted position that the family had ancestral properties at village Mayani and some of them were tenancy lands, some properties were purchased for the joint family, some properties were held by defendant No.2 and the other properties were held by Maruti. P.W. 1 - Vasant has accepted this position in his evidence. Relying on the said evidence and the admissions given by P.W.1 and also taking into consideration the partition memo dated 08/03/1965, the Lower Appellate Court came to the conclusion that partition had already taken place prior to the execution of Exhibit-82 between the four executants. It is further urged by the learned Counsel appearing on behalf of appellants that one of the executants was not even a member of the joint family. He submitted that the trial court, on the basis of this particular aspect, had decreed the suit and had not relied on the said memo of partition. However, it can be seen that the Lower Appellate Court has considered this aspect at length and has observed that the question whether one of the executants to the deed was entitled to get possession of the property is not the question which was to be decided in the

suit. Further, the lower Appellate Court also has considered the Mutation Entries and more particularly Mutation Entry No.7867 which is at Exhibit-94. The Lower Appellate Court also has considered at length the circumstances under which Maruti accepted the suit land on tenancy and the 7 x 12 extract at Exhibits-106 & 107 from 1944-45 to 1961-62 also have been taken into consideration. Further, other Mutation Entries also have been considered and, on the basis of these entries, the Lower Appellate Court has come to the conclusion that the tenancy, initially, was given on year to year basis by the landlord. However, subsequently, Maruti became the tenant from 1944-45 to 1961-62 and that circumstances clearly indicated that he was a tenant on behalf of joint family. Thus, the submission made by the learned Counsel appearing on behalf of appellants-plaintiffs cannot be accepted. No substantial question of law is raised in this second appeal. This Court, while exercising its jurisdiction under section 100 of the Civil Procedure Code cannot re-appreciate the evidence which is on record and if the view taken by the Lower Court is a plausible view, this Court cannot substitute its own view to the view taken by

the Lower Court.

9. In view of the well reasoned order passed by the Lower Appellate Court, I do not see any reason to interfere with the finding recorded by the Lower Appellate Court. Second appeal is, therefore, dismissed.

(V.M. KANADE, J.)